IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4964 OF 1990

1. Rudrayya Tippayya Swami,)
age 76 years, Occ: Service,)
r/o. Bhavani Peth, M.H.No.4/19-A,)
Final Plot No.8954/1, Plot No.49,)
since deceased by his L.Rs.)

1A. Tipayya Rudrayya Swami,)
age 46 yrs., Occ : Service,)
(since deceased through his)
heirs & Legal representatives:)

1A.I Smt.Vijayalaxmi Tipayya Sinhasan,)

1A.II Shri Rajshekhar Tipayya Sinhasan,)

1A.III Shri Chandrashekhar Tipayya)
Sinhasan.)

1A.IV Sau. Jayashree Vishwanath Swami,)

1B. Sidheshwar Rudrayya Swami,)
Age 36 yrs., Occ : Service,)

1C. Nagayya Rudrayya Swami,)
Age 36 yrs., Occ: Service,)
All residing at 4119,)
Bhavani Peth, Solapur.)

2. Nagayya Rachayya Swami,)
Age 75 yrs.,Occ:Agri.& Business,)
r/o. Kumbhari, Taluka South)
Solapur, Deceased.)

2A. Gaurabai Nagayya Swami,)
Since deceased by his heirs R)
Nos.2B to 2K -)

2B. Satayya Nagayya Swami,)
age 38 years, occ: business,)
r/o. Kumbhari, Taluka South,)
Solapur.)

2C. Siddayya Nagayya Swami,)
age 38 yrs., Occ : Service,)
r/o. 4/12-B, Bhavani Peth,)
Solapur.)

2D. Shivanand Nagayya Swami,)
age 28 yrs.,service r/o.Kumbhari,)
Taluka South Solapur.)

2E. Rajshekhar Nagayya Swami,)
age 25 years, Occ: Service,)
r/o. Kumbhari, Taluka- South,)
Solapur.)

2F. Basweshwar Nagayya Swami,
age 14 yrs., Minor, Occ : Nil,
r/o. Kumbhari, Taluka- South
Solapur.

2G. Subhash Nagayya Swami,
age 12 years, (Minor), Occ- Nil,
r/o. Kumbhari, Taluka South
Solapur.

2H. Smt.Indumath Virantayya Hiremath,
age 35 years, Occ: Household,
r/o. Bhavani Peth, Solapur,
M.H.No.4/19-B.

2I. Smt.Buddawa @ Shakuntala Irayya,
Hiremath, age 34 years,
Occ-Household, r/o.M.N.No.4/19-B,
Bhavani Peth, Solapur.

2J. Smt.Jagadevi d/o.Nagayya Swami,
age 33 yrs., Occ- Household,
r/o. M.H.No.4/19-B, Bhavani Peth,
Solapur.

2K. Sou.Kasturbai d/o. Nagayya Swami,
age 24 yrs., Occ: Household,
R/o. M.H.No.4/19-B, Bhavani Peth,
Solapur. ..Petitioners
(Org.Defendants)

Versus

1. Kalyanappa Gurushantappa
Alagundagi,
Age 42 yrs., Occ - Business,
r/o. Solapur.

2. Sidramayya Rudrayya Swami,
age 40 yrs., Occ - Service,
r/o. 4/19-B, Bhavani Peth,
Solapur.

3. Virantayya Virupaxayya Swami,
age 45 years, Occ - Service,
r/o.4/19-B, Bhavani Peth,
Solapur.

4. Shilabai Mallappa Kalshetti,
age 40 years, Occ - Household,
r/o.4/19-B, Bhavani Peth,
Solapur.

5. Mallinath Rudrayya Swami,
age 42 yrs., Occ : Business,
r/o. 4/19-B, Bhavani Peth,
Solapur.

6. Mahananda Sidramayya Swami,)
age 37 yrs., Occ : Business,)
r/o.4/19-B, Bhavani Peth,)
Solapur.)

7. Sou. Mahadevi Kantayya Swami,)
age 33 yrs., Occ : Household,)
r/o. Gangadhar Kanbus,)
Tal.South Solapur,)
Dist. Solapur.)

8. Sou.Jagdevi Bandappa Malage,)
age 44 years, Occ - Household,)
r/o 566, West Mangalwar Peth,)
Solapur.)

9. Sou.Shivaganga Dhanayya Swami,)
age 26, Occ : Household,)
r/o.350, East Mangalwar Peth,)
Solapur.)

10. Sou. Kalawati Gangadhar Swami,)
age 28 yrs., Occ : Household,)
r/o. Kamala Nagar, Vijapur Road,)
Solapur.)

11. Sou. Neelawati Shivashankar)
Chinmilla,)
age 24 yrs., Occ : Household,)
r/o. Tandur, Dist. Habib Nagar,)
Karnataka State.)..Respondents
(Org.Plffs.)

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Shri A.A.Kumbhakoni for the petitioners.

Shri G.S.Godbole for respondent No.1.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 6TH SEPTEMBER, 2004.

ORAL JUDGMENT:

1. Heard the learned advocates for the parties. Perused the records.

2. The petitioners challenge the judgment and order dated 16th April, 1984 passed in Regular Civil Suit No.1196 of 1974 by the IInd Joint Civil Judge,

Junior Division, Solapur, and the judgment and order dated 10th September, 1990 passed by the Additional District Judge, Solapur, in Civil Appeal No.544 of 1984. By the latter judgment and order, while dismissing the appeal, the lower appellate Court has confirmed the decree against the petitioners for eviction from the suit premises.

3. The challenge to the impugned judgment and order is two fold. Firstly that a composite suit, one in relation to the relief for restoration of possession based on title and other in relation to the eviction of the petitioners from the suit premises on the basis of the grounds available under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter called as "the Rent Act," was not maintainable, as such a suit suffers from misjoinder of causes of action as the cause of action for possession on the basis of title to the property being totally distinct and separate from the cause of action for eviction in favour of the landlords under the Rent Act, and therefore, both could not be combined in the same proceedings and both the Courts below having ignored this aspect have acted illegally while decreeing the suit. Secondly that both the Courts erred in holding that the respondents/ original plaintiffs had established the case in relation to the bonafide need of premises as well as default in payment of rent. Reliance is sought to be placed in the decision of

the Division Bench of Gujarat High Court in the matter of **Govindbhai Parshottamdas Patel & Ors. v. New Shorrock Mills, Nadiad,** reported in AIR 1984 Gujarat 182 and of the learned Single Judge of this Court in the matter of **Mohmad Husain Chorumiya Shaikh v. Taraben Manilal Shah,** reported in 1992 Bom.R.C. 41. The attention is also drawn to the averments in the plaint while submitting that the same clearly disclose the pleadings which reveal that the suit was filed primararily for restoration of possession from a trespasser and, in the alternative, for eviction on the basis of the grounds available under the Rent Act. The attention was also drawn to the procedure, which is required to be followed in the cases arising under the Rent Act, while contending that the same is different from the one to be followed in regular suits particularly in relation to a right of appeal as also the forum to which such appeal is to be filed, irrespective of the quantum of amount involved in relation to the arrears of rent and the absence of provision for second appeal. On the other hand, while submitting that the claim of the plaintiffs to be understood by reading the entire plaint as a whole, and there being no grievance made at any time by the petitioners in understanding the exact nature of the claim of the plaintiffs, it is submitted by the learned advocate for the respondents that both the parties had clearly understood that the dispute was between the landlord and the tenant and the

pleadings in relation to the grounds pertaining to denial of title was in respect of one of the grounds available for the landlord to seek eviction of a tenant under the Rent Act. Further it was sought to be contended that even in the proceedings for eviction filed against a tenant by the landlord under the Rent Act, if a dispute pertaining to the title of the premises arises for determination thereof, the Court dealing with the matters under the Rent Act is not debarred from dealing with the said issue. On proper reading of the pleadings in the plaint, it cannot be said that the suit was of the nature other than that between the landlord and the tenant. Reliance is sought to be placed in the decisions of the Apex Court in the matter of **Messrs Importers and Manufactures Ltd. v. Pheroze Framroze Taraporewala,** reported in AIR 1953 SC 73, of the Division Bench of this Court in **Smt.Savitribai & Anr. v. Vithal Hari Petakar,** reported in AIR 1981 Bombay 430 and of the learned Single Judge of this Court in **Shri Kamruddin Shabuddin Tamboli v. Shri Allauddin Fattemohamed Malik and Ors.,** reported in 1985(1)Bom.C.R. 101 and of the Apex Court in **Babulal Bhuramal & Anr. v. Nandram Shivram & Ors.,** reported in AIR 1958 SC 677.

4. It is to be noted that both the Courts have arrived at the concurrent findings on the issues pertaining to the bonafide need of the premises to the respondents and default in payment of rent by

the petitioners and both these findings having been arrived at, on analysis of the entire evidence on record in proper perspective, there is no case made out for interference therein in exercise of jurisdiction under Article 227 of the Constitution of India. None of the findings in respect of the claim of the respondents regarding bonafide need of the premises as well as default on the part of the petitioners in payment of rent can be said to be either perverse or arbitrary are not borne out from the record. Being so, as far as the facts of the case is concerned, there is no scope for interference in writ jurisdiction.

5. As already observed above, the petitioners seek to challenge the judgment and orders primararily on the ground of non-maintainability of composite suit inasmuch as that the claim of the respondents for restoration of possession on the basis of the title to the property was sought to be mingled with the grounds for eviction of a tenant available under the Rent Act. Irrespective of the fact whether such a suit can be filed or not, the fact remains that the decree for eviction was passed by the Civil Judge, Junior Division, Solapur. It is not in dispute that the suit for eviction of the tenants on the grounds available under the Rent Act in relation to the premises situated at Solapur and within the jurisdiction of the Civil Court at Solapur are to be entertained and tried and decided

by the Civil Judge, Junior Division, Solapur. It is also not in dispute that the suits for restoration of possession of immovable properties situated within the jurisdiction of the said Court had necessarily to be filed in the said Court when the market value of the property was less than Rs.10,000/- at the relevant time. In the case in hand, the plaint apparently discloses that the market value of the suit property was valued at Rs.8,767/- and the same was not disputed by the petitioners' predecessors, who had contested the suit by filing written statement. Obviously, therefore, the suit for restoration of the possession of the property was maintainable before the Civil Court, Junior Division, Solapur, in relation to the property in question. In other words, the Civil Judge, Junior Division, Solapur, had, at the relevant time, jurisdiction to entertain the suit for restoration of possession in relation to the suit property as well as the suit for eviction of a tenant from the suit property.

6. Once it is established that the Court had jurisdiction to decree the suit and the decision arrived at by the Court below does not disclose any finding which can be said to be either perverse or contrary to the materials on record, then such a decision would not warrant interference in writ jurisdiction under Article 227 of the Constitution of India, merely on the ground of misjoinder of

causes of action. It is to be noted that Section 99 of the Code of Civil Procedure clearly provides that no decree shall be reversed or substantially varied nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court provided that nothing in that section would apply to non-joinder of a necessary party. If the legislative mandate does not expect interference, even by the appellate Court in the decree passed by the lower Court merely on the ground of misjoinder of cause of action, when such misjoinder of cause of action does not affect the merits of the case or jurisdiction of the Court, certainly interference in such a decree in exercise of jurisdiction under Article 227 of the Constitution of India would be thoroughly uncalled for. As already seen above, there being no case made out for interference in the impugned judgment and orders on merits, and the Courts below had jurisdiction to entertain and try the suit for restoration of possession of the immovable property, based on the title, as well as the suit for eviction of a tenant by the landlord, merely filing of a composite suit on both the grounds, in the facts and circumstances of the case in hand, would not warrant interference in writ jurisdiction.

7. As rightly submitted on behalf of the respondents, a grievance of the parties, either in the plaint or in the written statement, has to be understood by reading the entire pleadings in the plaint or in the written statement, as the case may be, and not by picking up stray sentences from here and there from the pleadings. Overall reading of the plaint would necessarily disclose that the respondents had approached the Court for eviction of the petitioners from the suit property on various grounds including the grounds of bonafide need of the premises, default in payment of rent as well as denial of title. The pleadings apparently disclose that the respondents had served a notice upon the petitioners informing them about the purchase of the property by the respondents and consequently, the acquisition of status of a landlord vis-a-vis the petitioners, and there was no response to the said notice. It was, therefore, apparent that there was justifiable cause for the landlord to believe that the petitioners were not interested in accepting the title of the respondents to the suit premises.

8. As regards the decision of the Gujarat High Court in **Govindbhai Parshottamdas Patel's case (supra),** there was a serious dispute raised by the parties on the point of status of the occupant of the premises as to whether he was a licensee or tenant, and it was not a case of being a composite suit and, therefore, being not maintainable.

Undoubtedly, similar ground was also raised along with the other grounds relating to the absence of merits of the case for eviction of the occupants from the suit premises. The decision also lays down that considering the scheme of the Rent Act, it would be clear that when the same person or individual is invested with two different jurisdictions, he cannot exercise two jurisdictions simultaneously in one and the same proceeding and that he has to exercise one jurisdiction at a time because it is not 'he' (the individual officer), who acts, but it is the 'authority' under the particular Act, which is distinct and independent, which exercises that particular jurisdiction, and even if one jurisdiction is exercised, not only the original forum may be changed, but the procedure for trial and hearing of the particular proceeding to be adopted by that forum will also be different. There could be no quarrel about the proposition of law laid down by Gujarat High Court. The learned advocate for the petitioners is also justified in contending that the appellate forum in cases of decree of eviction under the Rent Act is not the same as the one under the Code of Civil Procedure in relation to the suit for possession based on title, and that there is no provision for second appeal in the case of decree of eviction under the Rent Act. However, all those factors are not required to be gone into, in the facts and circumstances of the case in hand. As already observed above, once the

petitioners are not able to make out any case on merits for interference in the judgment and order and once it is clear that the decree for eviction under the Rent Act as well as the decree for restoration of possession in a suit based on title to a immovable property, could have been passed by the same Court, and infact the suit was by the landlord against the tenant in terms of the provisions of the Rent Act, applying the provisions under Section 99 of the Code of Civil Procedure, and in the absence of any prejudice being disclosed to the petitioners on account of the alleged composite suit filed by the respondents, there is no case for interference in the impugned judgment and order. As rightly submitted by the learned advocate for the respondents, the pleadings in the plaint do not disclose any composite suit, as has been alleged. The pleadings in relation to the denial of title are essentially, as submitted by the learned advocate for the respondents, in relation to the ground for eviction of the tenant based on denial of title by him which is a ground for eviction available under the Rent Act.

9. For the reasons stated above, it is not necessary either to deal with other points sought to be raised nor it is necessary to refer to other decisions, which are relied upon by the advocate, as they do not justify any finding contrary to those arrived at in this judgment. In the result,

therefore, the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

10. At this stage, on oral request by the learned advocate for the petitioners, though objected by the respondents, the interim relief granted during the pendency of the petition shall remain in force for a period of eight weeks from today.